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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,023	04/12/2002	Ian L Brown	28053/37955	6243
4743	7590	01/12/2005	EXAMINER MAIER, LEIGH C	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			ART UNIT 1623	PAPER NUMBER

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Applicati n No.

10/009,023

Applicant(s)

BROWN ET AL.

Examiner

Leigh C. Maier

Art Unit

1623

--The MAILING DATE of this communication appears n the cover sheet with the c rrespondence address --

THE REPLY FILED 10 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): none.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached page.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: _____.

Claim(s) rejected: 1-10 and 26-33.Claim(s) withdrawn from consideration: 11-25 and 36-38.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
10. ☐ Other: _____


JAMES O. WILSON

SUPERVISORY PATENT EXAMINER

TECHNOLOGY CENTER 1623

Leigh C. Maier

Examiner

Art Unit: 1623

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ADVISORY ACTION

It appears to be Applicant's position that the broader definition of "resistant starch" is a colloquial term invoked by the examiner. The examiner disagrees. This broader definition is used throughout Applicant's disclosure, as discussed in the previous Office action. It is further noted that in the declaration filed June 10, 2004, Dr. Brown that the content of resistant starch (using the narrower definition) in available high amylose starches ranges from about 7.5% to 22%. However, the specification recites "[t]ypically, the amount of resistant starch provided as a proportion of daily carbohydrate intake is in the range from 5% to 90% ..." (Emphasis added) See page 16, 3rd paragraph. The recommendation that the daily intake of carbohydrate comprise 90% of resistant starch supports the examiner's position that the use of the to interpret the claims broader definition is supported throughout the specification. Otherwise, the examiner fails to see how this level of intake is possible when available high amylose starches have a maximum of about 22% of resistant (narrow definition) starch.

Regarding the IDS, Applicant is correct that the examiner had the incorrect date when referring to the latest IDS submission. This submission was February 26, 2004, and the examiner finds that the references listed on the search report were considered by the previous examiner and have been made of record. The examiner regrets the error and any subsequent confusion.

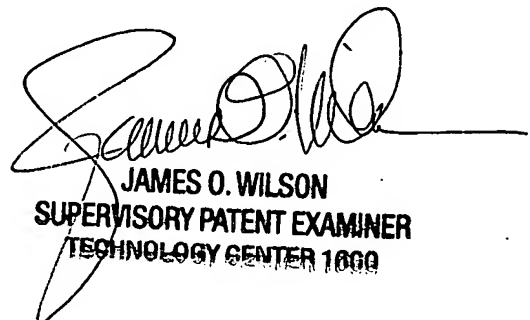
Examiner's hours, phone & fax numbers

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh Maier whose telephone number is (571) 272-0656. The examiner can normally be reached on Tuesday, Wednesday, and Friday 7:00 to 3:30 (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson (571) 272-0661, may be contacted. The fax number for Group 1600, Art Unit 1623 is (703) 872-9306.

Visit the U.S. PTO's site on the World Wide Web at <http://www.uspto.gov>. This site contains lots of valuable information including the latest PTO fees, downloadable forms, basic search capabilities and much more.

Leigh C. Maier
Patent Examiner
January 10, 2005



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SUPERVISORY PATENT EXAMINER
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